

*May 2004, No 3*

## **The Long Way of the Emerging Ombudsman Institution in Bulgaria**

### **Introduction**

Bulgaria continues to be among the few European countries without a national ombudsman institution, although the legislative framework is already in place. The election of the first Bulgarian parliamentary ombudsman, which took place at the National Assembly on May 14, 2004, failed as none of the nominated candidates succeeded in obtaining the required majority of more than half of the votes of the MPs participating in the voting. The main reason for the failure was the inability of political parties represented in Parliament to reach a consensus in the process of nominating candidates, which led to only partisan nominations being put forward.

### **Background**

#### ***A civil society initiative***

The initiative of establishing an ombudsman institution on national and municipal level in Bulgaria was launched by the civil society in the framework of the *Coalition 2000* anti-corruption initiative in 1998. The process involved the active participation of influential Bulgarian NGOs coordinated by the Center for the Study of Democracy (CSD) – a leading Bulgarian public policy think tank. The efforts which combined law drafting, advocacy and awareness activities, resulted in the development of a concept paper on the opportunities for establishing the ombudsman institution in Bulgaria and a draft Law on the Civic Defender and the Local Civic Mediators. The concept paper and the draft law, prepared by the *Coalition 2000* Ombudsman Expert Group were based on an in-depth analysis of both the foreign experience and the specific constitutional and legal environment in Bulgaria. A number of distinguished foreign ombudsmen, including the European Ombudsman, actively supported the process.

#### ***Promoting the institution***

From the very beginning of the process *Coalition 2000* and CSD focused their efforts on raising the public awareness on the ombudsman institution and convincing policy makers in

the advantages of its establishment in the country. During the long process of advocating for the introduction of the ombudsman the Ombudsman Expert Group worked in close cooperation with the relevant governmental institutions. This allowed representatives of the legislature, the executive and the judiciary to be actively involved in the whole process. In the course of the work the concept paper and the draft law were presented at a number of public policy events attended by representatives of all relevant institutions and organizations. The series of discussions contributed to an improved draft law on the basis of the useful recommendations and proposals received.

### ***The legislative procedure***

The draft law developed by the Ombudsman Expert Group was initially submitted to the previous National Assembly by a group of MPs in 2000, but the Parliament did not manage to discuss it before the end of its mandate.

In the summer of 2001 a version of the same draft law was submitted to the current National Assembly by a group of MPs and together with two other drafts governing the same matter was adopted at first reading by the National Assembly in June 2002. The complicated legislative procedure that followed resulted in the consolidation of the three initially submitted drafts into a single piece of legislation. Finally, on May 8, 2003, the National Assembly adopted the Law on the Ombudsman setting the grounds for the establishment of a national parliamentary ombudsman institution.

### ***The Law on the Ombudsman deficiencies***

Thanks to the active participation of the Ombudsman Expert Group members at all stages of the legislative procedure many of the fundamental principles, initially envisaged in the draft of *Coalition 2000* and CSD, were incorporated in the adopted law. However, the Parliament did not take into account all the relevant recommendations made by the expert group as well as by foreign ombudsmen, who provided CSD with detailed comments on the submitted drafts.

Some of the basic weaknesses of the law with negative consequences are:

- inadequately formulated criteria the ombudsman should meet (in terms of age, professional qualification and experience, etc.);
- the way the nomination procedure is regulated – only MPs and parliamentary groups are entitled to nominate candidates;
- the way the election procedure is regulated – a simple majority (more than half of the votes of the MPs participating in the voting) for the election of the ombudsman.

The simple majority along with the nominations restrictions allows the ombudsman to be elected by a comparatively small number of MPs, which in fact empowers the ruling party to easily elect the ombudsman without needing any votes from other parties. Such a solution, although strongly criticized, was practically unavoidable, since according to the Bulgarian Constitution only institutions envisaged in the Constitution may require higher majority and the ombudsman is not among these institutions.

In this context, other mechanisms appeared necessary in order to prevent politicizing the election and guarantee the impartiality of the institution. Such mechanisms were envisaged in

the draft, developed by *Coalition 2000* and CSD, but were not incorporated in the law. They concerned the nomination procedure and provided for a broader circle of institutions and persons to be able to nominate candidates (including a certain number of citizens as well) while at the same time such a right was not provided for MPs and parliamentary groups. Such a nomination procedure was aimed at achieving a certain balance, which would not allow a small group of MPs to propose and subsequently elect the ombudsman. However, in the long run, according to the expert group the most appropriate way of preventing the politicization of the ombudsman's election would be its inclusion in the Constitution, which would allow for the provision of qualified majority for the election.

### **The failed election of the parliamentary ombudsman**

#### ***Nomination***

With a delay (according to the law the election should have taken place by the end of March) a procedure for election of the ombudsman was finally opened in the end of April 2004. However, since the very beginning of the process political parties - instead of trying to search for a consensual person - followed the opposite approach and each party, and even smaller groups of MPs, nominated their own candidates. As a result, seven persons were officially proposed for election.

The nominating procedure was nontransparent and candidates did not have the opportunity to present their platforms to the general public. The lack of publicity in fact prevented the active involvement of the civil society in the process. Nominated candidates had only the opportunity to present in brief (5 minutes each) their views on the role and activities of the institution as well as the priorities they would follow in a plenary session just before the voting. However, even in plenary sessions there were no debates on the nominations.

#### ***Election. First and second voting***

The election took place on May 14 and in compliance with the law a secret voting procedure was applied. The first round was held with the participation of 198 (out of a total of 240) MPs. As none of the candidates reached the required majority of more than half of the votes of the MPs participating in the voting a second round took place with the participation of the first two candidates. 187 MPs participated in the second voting, but many of them (69 MPs) who had previously voted for other candidates boycotted the second round by submitting invalid ballots (empty envelopes, ballots with no names or having both names, etc.).

The results of the two voting rounds could be illustrated as follows:

<b>Nominated candidate</b>	<b>Background</b>	<b>Nominated by MPs from</b>	<b>First voting</b>	<b>Second voting</b>
<b>Prof. Peter-Emil Mitev</b>	Sociologist and former MP from Bulgarian Socialist Party	National Movement Simeon II and the Movement for Rights and Freedoms	<b>55</b>	<b>72</b>
<b>Ms. Anna Karaivanova</b>	Attorney-at-law, former Member of the Grand National Assembly and former public prosecutor	Bulgarian Socialist Party	<b>40</b>	<b>46</b>
<b>Mr. Dimitar Gochev</b>	Former Judge at the European Court of Human Rights in Strasbourg and	National Movement Simeon II	<b>29</b>	

	former Member of the Bulgarian Constitutional Court			
<b>Prof. Alexander Dzherov</b>	Professor in law and former MP from the Union of Democratic Forces	People's Union	<b>28</b>	
<b>Mr. Kiril Milchev</b>	MP from the Parliamentary Group of the National Movement Simeon II	National Movement Simeon II	<b>14</b>	
<b>Mr. Stanislav Dimitrov</b>	Deputy Chair of the Bulgarian League for Human Rights and former Member of the Bulgarian Constitutional Court	National Movement Simeon II and one independent MP	<b>14</b>	
<b>Mr. Emanuil Georgiev</b>	Attorney-at-law	United Democratic Forces	<b>12</b>	

According to the law the second voting required the same majority (more than half of the voting MPs) to be reached in order for the ombudsman to be elected. However, the large amount of invalid voting cards made reaching such a majority practically impossible. Thus, although receiving more votes than his direct opponent, Prof. Peter-Emil Mitev actually obtained only 38.5% of the votes and was not elected. Following the election, the Chair of the National Assembly announced that the next election will held within an uncertain period of time and expressed his hope that the Parliament will manage to elect an ombudsman before the end of its mandate, which is the summer of 2005.

#### **The establishment of municipal public mediators: the success of a different approach**

In contrast to the failure with the emerging parliamentary ombudsman, the introduction of municipal public mediators marked significant progress. Although the National Assembly did not include the initially envisaged provisions on local public mediators in the Law on the Ombudsman the sustained efforts of *Coalition 2000* and CSD lead to amendments to the Law on Local Self-Government and Local Administration (in force since October 27, 2003), providing municipal councils with the opportunity to elect public mediators.

The adopted legal framework of the public mediators encouraged the process of introducing such institutions in the country. With the support of *Coalition 2000* and CSD several Bulgarian municipalities initiated the introduction of local mediators in accordance with the amended legislation. As a result, until May 2004 the first three mediators (in the municipalities of Banite, Botevgrad and Kavarna) were elected and started performing their activities, while in several other municipalities (Razgrad, Shoumen, Bourgas, etc.) an election procedure was opened and the establishment of the institution is expected soon.

Unlike the politicized nomination and election procedure for the parliamentary ombudsman the establishment of the local public mediators followed a different approach. It relied on closer cooperation between local authorities and the civil society, which resulted in the nomination of widely accepted personalities and facilitated the election of the public mediators with the required qualified majority (two thirds of all members of the municipal councils).

#### **Conclusion**

The failed election of the ombudsman signifies that:

- The absence of constitutional provisions on the ombudsman institution together with the shortcomings of the ombudsman law in terms of nomination procedure and election criteria do not create the appropriate legal prerequisites for electing a non-partisan, highly qualified and broadly supported parliamentary ombudsman.
- The lack of political will, necessary for overcoming the inconsistencies of the legal framework, prevented political parties from reaching an agreement on the election not only in the course of the nomination procedure, but also before the second round. The results of the second voting and especially the great amount of invalid ballots clearly showed that the entire procedure was highly politicized.
- The nonpublic and nontransparent procedure did not permit any civic participation, which could have contributed to finding a better solution.

Having in mind the lack of sufficient guarantees in the law for a non-partisan election as well as the inadequate criteria for the nominees, *Coalition 2000* and CSD recommended on several occasions that political parties should conduct an effective dialogue and search for an appropriate candidate that could be elected with a higher majority than the one envisaged in the law.

A consensus-based election of the ombudsman was also recommended by the Council of Europe Secretary General Mr. Walter Schwimmer during a public discussion on the forthcoming introduction of the ombudsman institution in Bulgaria, organized by CSD in October 2003. The same message to Bulgarian politicians was formulated at the regional ombudsman conference organized jointly by CSD and the Greek Ombudsman (held in Sofia, November 2003) and attended by ombudsmen or representatives of the institution from more than 10 countries.

Furthermore, the successful start of instituting municipal public mediators on the basis of public private partnership and broad political consensus confirms the effectiveness of such an approach.

## Recommendations

### *Active involvement of civil society in the nomination of a consensus person and future establishment of the institution*

The successful election of a widely accepted personality highly depends on the active involvement of civil society and broad public consultations before the next nomination procedure is opened. This would not only increase the publicity and transparency of the entire procedure, but could also encourage political parties to reach an agreement so that the ombudsman could be elected with a higher majority. The broader support for the ombudsman would provide the institution with the necessary legitimacy and public confidence.

In particular, during the following months an open public debate should be launched with the active participation of representatives of the Parliament and the civil society for discussing the lessons learned from the recent elections. This debate would encourage political parties to clearly declare their will for an open dialogue aimed at reaching of a broad consensus on the election criteria and the nomination procedure. The National Ombudsman should be non-

partisan, with high professional credentials and experience in the field of public administration, personal integrity and commitment to good governance.

Civil society could provide support for the successful establishment of the national ombudsman also through training for the ombudsman staff, assistance in the drafting of internal rules and regulations and other capacity building measures.

### ***Further improving the legal framework***

Furthermore, the present situation once again confirms the necessity of improving the legal framework of the institution (through including provisions on the ombudsman in the Constitution as well as through amending the Law on the Ombudsman).

*Coalition 2000* and CSD started drafting amendments to the ombudsman legislation together with a proposal for constitutional changes to include provisions on the national and local ombudsmen in the Constitution.

Other constitutional provisions, necessary to strengthen the institutions' stability, independence and effectiveness, are:

- qualified majority for election and removal of the ombudsman;
- provide the ombudsman with a power to approach the Constitutional Court;
- provide a basis for specifying the relations between the national and local ombudsmen, etc.

Such constitutional and legislative amendments would be much more easily introduced on the basis of prior agreement between political parties. On the other hand they would create adequate prerequisites for independence and impartiality of the ombudsman along with the integrity of the office holder.

This could be achieved through a process of consultations with NGOs and a possible high profile public forum on these issues could be proposed to the Members of Parliament and other stakeholder institutions.

It is imperative to submit and adopt the constitutional and legislative amendments before the end of this year since the forthcoming parliamentary elections in 2005 will soon start to dominate the political and legislative agenda.